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August 1, 2024

Via CM/ECF

The Honorable Margaret M. Garnett
United States District Court
Southern District of New York
40 Foley Square, Room 2102
New York, NY 10007

Re: *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, No. 24-cv-1363

Dear Judge Garnett:

Pursuant to Rule I(D)(3)(ii)-(iii) of Your Honor's Individual Rules and Practices, Plaintiffs fuboTV Inc. and fuboTV Media Inc. ("Fubo") respectfully request leave to file under seal and in redacted form on the public docket (i) portions of Fubo's Reply Brief In Support of its Motion for Preliminary Injunction; and (ii) certain of the exhibits thereto. Each of the Defendants has consented to Fubo filing the above-listed materials under seal or with redactions.

Fubo respectfully submits that good cause exists for sealing and/or redacting the confidential materials described above, which fall into five categories: (i) highly confidential carriage agreements; (ii) highly confidential expert and witness declarations; (iii) highly confidential deposition testimony; (iv) external correspondence regarding highly confidential material; and (v) highly confidential internal correspondence and proprietary financial analyses, marketing data, and business strategy.

Courts in this district have repeatedly recognized that confidential, contractual materials are appropriately sealed. *See Rubik's Brand Ltd. v. Flambeau, Inc.*, 2021 U.S. Dist. LEXIS 53529, at *2 (S.D.N.Y Mar. 22, 2021) (granting motion to seal documents containing the terms of confidential trademark licensing agreements). Courts also regularly find that documents containing proprietary information that informs a corporation's strategy may be appropriately sealed. *See Skyline Steel, LLC v. PilePro, LLC*, 101 F. Supp. 3d 394, 412-13 (S.D.N.Y. 2015) (emails regarding confidential negotiations between Skyline and its customers).¹ The exhibits

¹ *See also Louis Vuitton Malletier S.A. v. Sunny Merch. Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015) (advertising expenditures, strategies, policies, and sales); *GoSMiLE, Inc. v. Dr. Jonathan Levine, D.M.D. P.C.*, 769 F. Supp. 2d 630, 649-50 (S.D.N.Y. 2011) (granting motion to seal internal financial information and budgets).

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listed below contain information that is highly sensitive and would cause Fubo and other parties serious harm if disclosed; this information is similar or identical to information that this Court previously ordered sealed. *See, e.g.*, Dkt. 147 at 2 (granting Fubo's PI Motion to Seal).

Fubo's Carriage Agreements

The exhibits below are highly confidential business agreements that concern agreements related to licensing video content. Where, as here, the disclosure of "confidential business terms" would result in "competitive harm" to a party, such as a "disadvantage . . . in future . . . negotiations with third parties," this Court has agreed to seal such documents. *News Corp. v. CB Neptune Holdings, LLC*, 2021 WL 3409663, at *2 (S.D.N.Y Aug. 4, 2021).

Exhibit Number	Plaintiffs' Trial Exhibit
Ex. 049	Major Rights Agreements Expirations
Ex. 079	PX188
Ex. 080	PX190
Ex. 081	PX192

Expert & Witness Declarations

The exhibits below are declarations of the parties' experts and witnesses. These exhibits reference commercially sensitive, proprietary information from Fubo, the Defendants, and third parties. For example, Mr. Thun's second declaration discusses DirecTV's carriage negotiations with Defendants, which are subject to confidentiality provisions contained in the agreements themselves and are commercially sensitive. For the same reasons as above, Fubo respectfully requests that the Court order these declarations to be sealed.

Exhibit Number	Declarant
Ex. 17	Edwin Desser
Ex. 18	Michael Whinston
Ex. 27	Robert Thun (second declaration)
Ex. 44	Alberto Horihuela
Ex. 67	David Gandler
Ex. 68	John Janedis
Ex. 69	Todd Mathers
Ex. 70	Gary Schanman
Ex. 71	Robert Thun (first declaration)
Ex. 124	James Trautman
Ex. 125	Jonathan Orszag

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Deposition Testimony

The exhibits below are transcripts of witnesses' deposition testimony that the parties have designated as highly confidential. These exhibits contain sensitive commercial business information, including specific terms of carriage agreements, internal business strategy, and proprietary financial information. For the same reasons as above, Fubo respectfully requests that the Court order these declarations to be sealed.

Exhibit Number	Deponent
Ex. 008	James Pitaro
Ex. 009	Sean Breen
Ex. 010	Bob Iger
Ex. 011	Justin Lancer
Ex. 012	Justin Warbrooke
Ex. 013	Bruce Campbell
Ex. 014	Justin Connolly
Ex. 015	John Nallen
Ex. 016	Alberto Horihuela
Ex. 019	Peter Distad
Ex. 020	Gary Schanman
Ex. 021	Jonathan Orszag
Ex. 022	Michael Whinston
Ex. 023	Edwin Desser
Ex. 024	Anthony Petitti

External Correspondence / Hearing Transcript

The exhibits below are emails, non-public third-party research, and a pretrial hearing transcript that the parties have labeled as highly confidential because they contain commercially sensitive business information. Courts in this district have held that it is appropriate to seal highly confidential correspondence discussing parties' ongoing commercial relationship. *See, e.g., PDV Sweeny, Inc. v. ConocoPhillips Co.*, 2014 WL 4979316, at *2 (S.D.N.Y. Oct. 6, 2014) (holding that the sealing of documents concerning the parties' "ongoing commercial relationship" was appropriate given "their containing sensitive commercial information affecting the parties' ongoing relationship"). Fubo respectfully requests that the Court order these emails to be sealed.

Exhibit Number	Plaintiffs' Trial Exhibit / Bates
Ex. 006	Initial Pretrial Conference Transcript
Ex. 072	PX122
Ex. 073	PX134

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Ex. 074	PX175
Ex. 075	PX176
Ex. 076	PX178
Ex. 077	PX182
Ex. 078	PX183
Ex. 204	PX204
Ex. 099	PX273
Ex. 100	PX274
Ex. 101	PX275
Ex. 104	PX286
Ex. 137	FUBO_0165677

Internal Correspondence and Proprietary Financial Analyses, Marketing Data, and Business Strategy

The exhibits below include models, decks, and internal emails that reflect confidential and proprietary business strategies and financial information. Courts in this district routinely seal this kind of information. *See, e.g., Kewazinga Corp. v. Microsoft Corp.*, 2021 WL 1222122, at *3 (S.D.N.Y. Mar. 31, 2021) (sealing confidential research and development information, marketing plans, revenue information, pricing information); *GoSMiLE, Inc.*, 769 F. Supp. 2d at 649-50 (granting motion to seal internal financial information and budgets).

Exhibit Number	Plaintiffs' Trial Exhibit / Bates
Ex. 026	PX154
Ex. 030	FOX-008644
Ex. 031	FOX-009562
Ex. 032	FOX-009622
Ex. 033	FOX-012718
Ex. 034	FOX-013203
Ex. 035	FOX-029701
Ex. 036	FOX-032468
Ex. 037	FOX-065311
Ex. 038	FUBO_0150388
Ex. 039	JX001
Ex. 040	JX003
Ex. 041	JX013
Ex. 042	JX014
Ex. 043	JX015
Ex. 045	JX036
Ex. 046	JX041

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Ex. 047	JX042
Ex. 048	JX059
Ex. 050	PX015
Ex. 051	PX019
Ex. 052	PX024
Ex. 053	PX025
Ex. 054	PX052
Ex. 055	PX053
Ex. 056	PX055
Ex. 057	PX058
Ex. 058	PX059
Ex. 059	PX061
Ex. 060	PX076
Ex. 061	PX081
Ex. 062	PX084
Ex. 063	PX086
Ex. 064	PX087
Ex. 065	PX088
Ex. 066	PX089
Ex. 083	PX207
Ex. 084	PX211
Ex. 085	PX216
Ex. 086	PX220
Ex. 087	PX236
Ex. 088	PX238
Ex. 089	PX242
Ex. 090	PX243
Ex. 091	PX245
Ex. 092	PX246
Ex. 093	PX251
Ex. 094	PX253
Ex. 095	PX255
Ex. 096	PX257
Ex. 097	PX268
Ex. 098	PX269
Ex. 102	PX282
Ex. 103	PX285
Ex. 105	PX289
Ex. 106	PX290

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Ex. 107	PX319
Ex. 108	PX322
Ex. 109	PX325
Ex. 111	PX401
Ex. 113	PX412
Ex. 114	PX413
Ex. 123	PX151
Ex. 126	PX456
Ex. 127	TWDC_FUBO_00018055
Ex. 128	TWDC_FUBO_00123245
Ex. 129	PX129
Ex. 130	WBD-00003615
Ex. 133	JX023
Ex. 134	JX028
Ex. 135	JX032
Ex. 136	JX22
Ex. 138	TWDC_FUBO_00084140

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Dated: August 1, 2024

Respectfully submitted,

/s/ Thomas G. Schultz

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Dennis D. Howe (admitted *pro hac vice*)
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Cc: All Counsel of Record (via CM/ECF)